

Internal Revenue Service  
District Director

Department of the Treasury

Person to Contact:

Telephone Number:

Refer Reply to:

EIN:

Date:

Dear Sir or Madam:

We have considered your application for exemption from Federal income tax as an organization described in section 501(c)(4) of the Internal Revenue Code of 1986. We have also considered whether you qualify under section 501(c)(3) of the Code.

On [REDACTED], you submitted Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code. In our letter dated [REDACTED], we advised you that this application form was not applicable for a homeowners association. You then submitted Form 1024, Application for Recognition under section 501(a) on [REDACTED]; at this point your Form 1023 was withdrawn from consideration. Nevertheless, this letter discusses section 501(c)(3) for your information.

The information you submitted discloses that you were incorporated under the nonprofit corporation laws of the State of [REDACTED] on [REDACTED].

You are a membership organization formed by a real estate developer to own and maintain common areas and to enforce covenants to preserve your development for the benefit of all the residents of the community.

Your membership consists of [REDACTED] homeowners. You are financially supported by assessments of your members. Your primary activity consists of administering and enforcing covenants for preserving the architecture and appearance of the housing development and owning and maintaining common sidewalks. These common sidewalks and walkways are all around one building complex.

Section 501(c) of the Code describes certain organizations exempt from income tax under section 501(a) and reads, in part, as follows:

"(4) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes."

"(3) Corporations, and any community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements) any political campaign on behalf of (or in opposition to) any candidate for public office."

Section 1.501(c)(4)-1(a) of the Income Tax Regulations provides that a civic league or organization described in section 501(c)(4) of the Code may be exempt if it is not organized or operated for profit and is operated exclusively for the promotion of social welfare. The Regulations describe social welfare as promoting in some way the common good and general welfare of the people of the community. A section 501(c)(4) organization is one which is operated primarily for the purpose of bringing about civic betterments and social improvements.

Revenue Ruling 74-17, 1974-1 C.B. 130, provides that an organization formed by the unit owners of a condominium housing project to provide for the management, maintenance and care of the common areas of the project, as defined by State statute, with the membership assessments paid by the unit owners does not qualify for exemption from Federal income tax under section 501(c)(4) of the Code. The services provided constitute private benefits not within the purview of section 501(c)(4).

This ruling may be distinguished from Revenue Ruling 74-99, 1974-1 C.B. 131, which provides that, to qualify for exemption under section 501(c)(4), a homeowners association must (1) serve a "community" which bears a reasonable recognizable relationship to an area ordinarily identified as governmental, (2) not conduct activities directed to the exterior maintenance of private residences, and (3) make the common areas or facilities it owns and maintains available for the use and enjoyment of the general public.

The Internal Revenue Service takes the position that in order for an organization to qualify for exemption from Federal income tax as a social welfare organization described in section 501(c)(4) of the Code, it must be primarily engaged in promoting in some way the common good and general welfare of the community as a whole.

An organization, to be described in section 501(c)(3), has to be both organized and operated exclusively for one or more exempt purposes.

Regulation section 1.501(c)(3)-1(b)(1)(i) provide that an organization is organized exclusively for one or more exempt purposes only if its articles or organization:

(a) Limit the purposes of such organization to one or more exempt purposes, and

(b) Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes."

Since you provide services to your membership similar to those described in Revenue Ruling 74-17 rather than serve in a capacity similar to a governmental unit as described in Revenue Ruling 74-99, you are not considered to an organization described in section 501(c)(4) of the Code.

The purposes set out in your organizing document do not fall within the purview of section 501(c)(3) of the Code, therefore you do not meet the organizational test. Consequently, you do not qualify as an organization described in section 501(c)(3) of the Code.

Therefore, we have concluded that you do not qualify for exemption from Federal income tax as an organization described in either section 501(c)(4) or 501(c)(3) of the Code.

You are required to file Federal income tax returns annually with your district director.

Contributions to you are not deductible under section 170 of the Code.

As provided by section 6104(c) of the Code and the applicable regulations, the appropriate State officials are being notified of our determination.

If you are in agreement with this proposed determination, we request that you sign and return the enclosed agreement Form 6018, Consent to Proposed Adverse Action. Please note the instructions for signing on the reverse side of this form.

If you are not in agreement with this proposed determination, we recommend that you request a hearing with our office of Regional Director of Appeals. Your request for a hearing should include a written appeal giving the facts, law, and any other information to support your position as explained in the enclosed Publication 892. You will then be contacted to arrange a date for a hearing. The hearing may be held at the office of Regional Director of Appeals or, if you request, at a mutually convenient District Office. A self-addressed envelope is enclosed.

If we do not hear from you within 30 days from the date of this letter, and you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies and will then become our final determination. Section 7428(b)(2) of the Internal Revenue Code provides, in part, that, "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

Sincerely yours,

District Director

Enclosures:

Publication 892

Form 6018

Self-addressed envelope